



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date:	06/24/14	Bill No:	Assembly Bill 919
Tax Program:	Sales and Use	Author:	Williams
Sponsor:	Board of Equalization	Code Sections:	RTC 6018.2
Related Bill:		Effective Date:	01/01/15

BILL SUMMARY

This bill enables qualified itinerant veteran vendors to receive repayment of sales tax paid to the Board of Equalization (BOE) during the eight-year period beginning on and after April 1, 2002, and before April 1, 2010, as specified.

Summary of Amendments

Since the previous analysis, this bill was amended to appropriate \$50,000 for purposes of the repayments, and require the BOE to prepare a report to the Legislature with the names of each qualified veteran issued a repayment and the repayment amount.

ANALYSIS

CURRENT LAW

Existing law¹ imposes the sales tax on the retail sale of tangible personal property in this state. Existing law also imposes the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer. The sales or use tax is computed on the retailer's gross receipts or the sales price, respectively, unless the law provides a specific exemption or exclusion.

Generally, persons engaged in the business of selling tangible personal property must obtain a seller's permit. These persons must also report the tax on a BOE prescribed return. However, California's Sales and Use Tax Law places a variety of retailers on a "consumer" reporting status. Under a "consumer" reporting status, the law eliminates the need for the retailer to obtain a seller's permit and report the tax on his or her sales. Rather, these retailers are regarded as consumers, and they must pay tax on their purchases of taxable products they intend to sell.

This "consumer" reporting status extends to various classes of retailers, such as qualified itinerant veterans when they sell particular goods. Until January 1, 2022, the law² regards these "qualified itinerant vendors" as consumers of tangible personal property they own and sell, except alcoholic beverages and any sale over \$100.

The law defines "qualified itinerant vendor" as a person that:

- Was a United States Armed Forces member who received an honorable discharge or a release from active duty under honorable conditions,
- Is unable to obtain a livelihood by manual labor due to a service-connected disability,
- Is a sole proprietor with no employees, and

¹Part 1, Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

²RTC Section 6018.3 of the Sales and Use Tax Law.

- Has no in-state permanent place of business.

The law defines “permanent place of business” as any building or other permanently affixed structure, including a residence, used to sell, take orders, and arrange for shipment of, tangible personal property. The definition excludes any building or other permanently affixed structure, including a residence, used for any of the following:

- 1) Tangible personal property storage.
- 2) The cleaning or storage of property used in connection with the manufacture or sale of tangible personal property.

PROPOSED LAW

This bill states legislative findings and declarations, and states the bill’s public purpose.

The bill states the Legislature’s intent that the sales tax, interest, and any penalties paid by qualified veterans on sales for \$100 or less (excluding alcoholic beverages) during the period April 1, 2002 but before April 1, 2010 be repaid in accordance with this bill.

The bill’s repayment provisions do the following:

- Permit a qualified veteran to receive from the state a qualified repayment if the repayment provisions are satisfied.
- Specify the bill’s procedures shall be the procedure and remedy for the claims for a repayment of state, local and district tax, interest or penalties paid by a qualified veteran.
- Define a “qualified veteran” as a person who
 - (1) met the requirements of a qualified itinerant vendor as set forth in law,³ during the period in which the sales were made,
 - (2) Paid to the BOE, state, local and district taxes, and any associated interest and penalties for which the qualified veteran collected no sales tax reimbursement from customers.
- Define “qualified repayment” as an amount equal to the state, local and district taxes for which the qualified veteran collected no sales tax reimbursement from customers, and any associated interest or penalties, less any amount previously refunded, credited, or paid, as specified.
- Before January 1, 2016, authorize a qualified veteran to file a claim with the BOE.
- On or before March 1, 2016, require the BOE to certify to the Controller the qualified repayment amount to be made, and appropriate \$50,000 for the amount available for these repayments.
- Allow for a proration if claims exceed \$50,000.
- Prohibit the payment of interest on any qualified repayment.
- By May 1, 2016, require the BOE to report (1) to the Legislature the names of qualified veterans that received a repayment and the repayment amount, and (2) to the Controller any appropriation amount remaining.

³ RTC Section 6018.3 of the Sales and Use Tax Law.

BACKGROUND

In 2009, the BOE sponsored legislation⁴ that made these veterans consumers. Subsequent legislation⁵ extended the January 1, 2012 sunset date to January 1, 2022. For several years prior to these legislative acts, several veterans had argued that state law, which exempts honorably discharged veterans from locally-imposed license taxes and fees, also exempts itinerant veteran vendors from any state-imposed tax. Specifically, they argued that the law⁶ exempts honorably discharged veterans from payment of the sales and use tax on mobile food cart sales of food products and carbonated beverages. This provision reads in its entirety as follows:

“Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefore.”

In 1893, this provision was added to law. The chaptered bill was described as “An act to establish a uniform system of county and township government.” In its present form (which has remained unchanged since 1941), Section 16102 falls within Chapter 2 of Part 1 of Division 7 of the Business and Professions Code, entitled *Licensing by Counties*.

In 1999, the BOE held that this Business and Professions Code provision does not apply to California’s Sales and Use Tax Law. A veteran vendor unsuccessfully challenged the BOE’s decision in Los Angeles Superior Court (No. BC 210257). The BOE’s decision is also consistent with that of the Office of Legislative Counsel. That Office rendered two opinions specific to this issue in 1998 and 2006. The Office of Legislative Counsel concluded that the Business and Professions Code exemption only applies to county license tax and license fees, and does not apply to sales and use taxes.

COMMENTS

1. **Sponsor and purpose.** Upon unanimous vote of all Members, the BOE is sponsoring this bill to recognize qualified veterans’ military service and address the confusion in law unique to veterans’ tax obligations.

In 2009, the Legislature unanimously voted to specify that honorably discharged veterans with service-related disabilities who have no permanent place of business are consumers, not retailers, of certain goods they sell. As a result, these veterans are no longer responsible for sales tax on goods sold for less than \$100 per item (except alcohol beverages). The purpose of that legislation was to ease the economic burdens of veterans who have served our nation and sustained permanent injuries in foreign conflicts. Due to a variety of statutes, some itinerant veterans in need of this relief have acted in good faith on the belief they could make sales of small items without responsibility for the tax. These itinerant veterans lack substantial assets and many experienced forced collection action when the BOE

⁴ SB 809, (Stats. 2009, Ch. 621, Comm. on Veteran Affairs), operative April 1, 2010 to January 1, 2012.

⁵ SB 805 (Stats. 2011, Ch. 246, Comm. on Veteran Affairs).

⁶ Business and Professions Section 16102.

ultimately collected the tax. The BOE Members believe the circumstances warranting this treatment apply to periods before the effective date of the 2009 legislation, and a small number of itinerant veterans are in need of this relief for these prior periods.

This measure provides modest relief only to some of our veterans who have been required to remit sales tax, interest, and penalties to the BOE, in those unfortunate situations in which they failed to collect the sales tax reimbursement from their customers.

2. **The June 24, 2014 amendments** appropriate \$50,000 for repayments, and require the BOE to report to the Legislature the names of each qualified veteran issued a repayment and the repayment amount. The **May 23, 2014 amendment** rearranged a comma to mirror the Business and Professions Code provision explained previously. The **January 29, 2014 amendments** made technical corrections and clarified that the repayment amount does not include amounts previously refunded, credited, or paid to a qualified veteran, through any means whatsoever. The **January 17, 2014 amendments** clarified that the repayment amount does not include any amount previously refunded to a qualified veteran through administrative refund actions, including amounts received in judgment or settlement, as specified. The **January 6, 2014 amendments** made clarifying and technical changes to specify that sales tax paid *during* the period April 1, 2002 but before April 1, 2010 is subject to repayment. The amendments also revised the date in which claims must be filed and the date in which the BOE must initiate the refunds.
3. **The BOE records are adequate to process refund claims.** The BOE has retained computer files and taxpayer payment histories sufficiently far back to track payments attributable to any claims for repayment that may be filed under the bill.
4. **How many veterans will claim a refund?** The BOE is aware of a small number of veterans that have filed appeals on the issue related to the Business and Professions Code explained previously. We do not know how many other qualified veterans this bill may reach. However, we expect that the number will be minimal.
5. **Current Sales and Use Tax Law has broader disclosure requirements in certain instances.** The bill requires the BOE to notify only the *Legislature* of the veterans' names that receive repayments under the bill and the associated repayment amounts. The law currently has provisions that require the BOE's *public* disclosure of taxpayers' names and amounts. For example, for tax dispute settlements,⁷ the law requires the BOE to make a public record of the taxpayers' names and liability reduction amounts, if the reduction exceeds \$500. For approved refunds over \$50,000 and denied refund claims over \$100,000,⁸ the BOE publicly discloses refund claimants' names and the associated refunded or denied amounts.

COST ESTIMATE

Some costs will be incurred to notify qualified veterans and process claims for refund. These one-time costs are expected to be insignificant (less than \$10,000).

⁷ RTC Section 7093.5 of the Sales and Use Tax Law.

⁸ BOE Regulation 5237, Board Approval Required for Refunds over \$100,000.

REVENUE ESTIMATE

The bill appropriates \$50,000 for repayments. Accordingly, if qualified veterans claim the total repayment amount, the revenue loss of \$50,000 will occur in fiscal year 2016-17.

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